

UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII

STEVEN ENG,

Plaintiff,

vs.

STATE OF HAWAII, DEPT. OF PUBLIC
SAFETY, KUKUI PLAZA ASSOCIATION
AOAO, SHERIFF OFFICER TOMMY
CAYETANO, JOHN DOES 1-10, JANE
DOES 1-10, DOE ASSOCIATIONS 1-
10, DOE PARTNERSHIPS 1-10, DOE
CORPORATIONS 1-10, DOE
GOVERNMENTAL AGENCIES 1-10,

Defendants.

CIV. NO. 18-00282 LEK-KJM

**ORDER GRANTING IN PART AND DENYING IN PART
DEFENDANT ASSOCIATION OF OWNERS OF KUKUI PLAZA'S
MOTION TO DISMISS COMPLAINT FILED ON JULY 23, 2018**

On May 15, 2019, Defendant Association of Owners of Kukui Plaza ("Association") filed its Motion to Dismiss Complaint Filed on July 23, 2018 ("Motion to Dismiss").¹ [Dkt. no. 28.] Plaintiff Steven Eng ("Plaintiff") filed his memorandum in opposition on January 31, 2020, and the Association filed its reply on February 5, 2020. [Dkt. nos. 48, 49.] The Motion to Dismiss came on for hearing on February 21,

¹ The Association states it has been incorrectly identified as Kukui Plaza Association AOA. [Motion to Dismiss at 2.]

2020.² The Association's Motion to Dismiss is hereby granted, insofar as: Counts I and VI are dismissed without prejudice because Plaintiff has clarified that the Complaint does not allege constitutional claims against the Association; and Count XII is dismissed without prejudice for lack of subject matter jurisdiction. The Motion is denied in all other respects.

BACKGROUND

Plaintiff, who was proceeding pro se at the time, filed his Complaint on July 23, 2018.³ [Dkt. no. 1.] Plaintiff asserts federal subject matter jurisdiction exists, pursuant to 28 U.S.C. §§ 1331, 1343, and 1367. [Complaint at pg. 2.]

According to the Complaint, on July 26, 2016, at approximately 10:15 a.m., a sheriff, a security guard, and others came to the door of the apartment unit where Plaintiff lives. When Plaintiff answered the door, he was wearing only

² Defendants State of Hawai'i, Department of Public Safety and Deputy Sherriff Tommy Cayetano's ("Cayetano" and, collectively, "State Defendants") Motion for Summary Judgment for Qualified Immunity ("Summary Judgment Motion"), [filed 5/15/19 (dkt. no. 29),] was also heard on February 21, 2020. The Summary Judgment Motion will be addressed in a separate order.

³ The case was referred to the pro bono panel after the filing of the Motion to Dismiss and the Summary Judgment Motion. [Order Referring Case to the Civil Pro Bono Panel, filed 5/21/19 (dkt. no. 32).] Plaintiff's counsel was appointed on September 13, 2019. [Dkt. no. 38.]

underwear because he was about to take a shower. Plaintiff asked the group what they wanted, and they asked him if he had received a notice. Plaintiff responded that he had not and asked if they had contacted the owner of the unit, who did not live there. Instead of answering, the sheriff and a female pushed their way into Plaintiff's unit. Before they entered, neither the sheriff nor anyone else identified what legal authority permitted them to enter Plaintiff's home. [Id. at pg. 3.]

Plaintiff stated the female had to leave his home, but the sheriff could wait inside while Plaintiff got dressed. The female refused to leave. Plaintiff said he had to make a phone call, turned, and began to walk toward the kitchen counter to retrieve his phone. Plaintiff alleges the sheriff charged him from behind, slammed him into a chair, and handcuffed him. The sheriff explained that he did so because Plaintiff pushed him, but Plaintiff asserts the sheriff lied. The sheriff twisted Plaintiff's arms and attempted to drag him from the unit, causing Plaintiff to scream in pain. [Id. at pg. 4.] The sheriff told Plaintiff "'to shut up,'" but Plaintiff states he could not stop screaming because of the pain. [Id.] The sheriff then choked him to try to stop him from screaming. None of the other persons present attempted to stop the sheriff's actions. [Id. at pgs. 4-5.]

Plaintiff alleges the female appeared to be in charge. The sheriff and the female consulted on multiple occasions. One of the other males who was present retrieved Plaintiff's pants, but he removed Plaintiff's personal property from the pants before Plaintiff was allowed to put the pants on. Plaintiff was taken to the Sheriff's Office, booked, and brought back to his home. [Id. at pg. 5.] Plaintiff then discovered his home had been "trashed." [Id.] Items had been removed from the closet and thrown into the kitchen and living room. The unit walls and ceiling were damaged and there was debris in the closet and on the floor. [Id.]

The Complaint alleges the following claims: a 42 U.S.C. § 1983 claim against all defendants for violation of Plaintiff's rights under the Fourth, Fifth, Eighth, and Fourteenth Amendments ("Count I"); an assault and battery claim against all defendants ("Count II"); a claim for abuse of process, unlawful arrest, and false imprisonment against all defendants ("Count III"); a negligent training claim against DPS ("Count IV"); an intentional infliction of emotional distress ("IIED") claim against all defendants ("Count V"); a claim against all defendants for violating the Hawai'i State Constitution ("Count VI"); a negligence claim against all defendants ("Count VII"); a gross negligence claim against all defendants ("Count VIII"); a claim that all defendants

intentionally inflicted physical distress upon Plaintiff ("Count IX");⁴ a negligent infliction of emotional distress ("NIED") claim against all defendants ("Count X"); a loss of consortium claim against all defendants ("Count XI"); and a claim against the Association for secretly installing a motion-activated, video and/or photographic recording device in Plaintiff's home, in violation of his right to privacy ("Count XII").

On August 30, 2018, the Association filed its answer to the Complaint. [Dkt. no. 12.] On September 28, 2018, the State Defendants filed their answer to the Complaint. [Dkt. no. 19.]

The Association brings the Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and (6). The Association argues Plaintiff's claims against it should be dismissed because the Complaint does not allege a basis for either federal question jurisdiction or diversity jurisdiction over the Association. In the alternative, the Association argues Plaintiff's claims against it should be dismissed because he has not pled sufficient facts to support his claims.

⁴ Count IX also alleges the intentional infliction of emotional distress, but that claim is already set forth in Count V.

DISCUSSION

I. Constitutional Claims

At the hearing on the Motion to Dismiss, Plaintiff's counsel clarified that Plaintiff is not asserting constitutional claims against the Association. The Motion to Dismiss is therefore granted, insofar as the constitutional claims in the Complaint against the Association, *i.e.* Counts I and VI, are dismissed. However, the dismissal is without prejudice because it is arguably possible for Plaintiff to amend his constitutional claims, if he elects to assert such claims against the Association. See Sonoma Cty. Ass'n of Retired Emps. v. Sonoma Cty., 708 F.3d 1109, 1118 (9th Cir. 2013) ("As a general rule, dismissal without leave to amend is improper unless it is clear, upon de novo review, that the complaint could not be saved by any amendment." (brackets, citation, and internal quotation marks omitted)). Although the dismissal is without prejudice, Plaintiff is not granted leave to amend at this time. See infra Section IV.

II. Jurisdiction

Federal question jurisdiction exists over Count I, which alleges a § 1983 claim against the State Defendants. See 28 U.S.C. § 1331 ("The district courts shall have original jurisdiction of all civil actions arising under the

Constitution, laws, or treaties of the United States."). 28

U.S.C. § 1367 provides, in pertinent part:

(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. . . .

. . . .

(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if -

(1) the claim raises a novel or complex issue of State law,

(2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,

(3) the district court has dismissed all claims over which it has original jurisdiction, or

(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

The Complaint does not expressly allege that Cayetano and the others who were with him during the events that allegedly occurred on July 26, 2016 ("7/26/16 Incident") were acting on behalf of the Association. However, the Complaint must be liberally construed because Plaintiff was proceeding pro se when he filed it. See, e.g., Eldridge v. Block, 832 F.2d 1132, 1137

(9th Cir. 1987) ("The Supreme Court has instructed the federal courts to liberally construe the 'inartful pleading' of pro se litigants." (citing Boag v. MacDougall, 454 U.S. 364, 365, 102 S. Ct. 700, 701, 70 L. Ed. 2d 551 (1982) (per curiam))).

Liberally construed as a whole, the Complaint alleges tort claims against the Association arising from its role in and responsibility for the 7/26/16 Incident. This Court therefore concludes that supplemental jurisdiction exists over Plaintiff's claims against the Association arising from the 7/26/16 Incident because those claims arise from the same case and controversy as Plaintiff's § 1983 claim against the State Defendants. Further, none of the situations listed in § 1367(c) exist in this case. The Motion to Dismiss is denied as to the Association's request to dismiss, for lack of jurisdiction, Plaintiff's claims against the Association arising from the 7/26/16 Incident.

In addition to the claims based on the 7/26/16 Incident, Count XII alleges the Association secretly installed a recording device in Plaintiff's home. The Complaint, however, does not explain how the alleged installation of the recording device is related to the 7/26/16 Incident. This Court cannot conclude that the claim based on the Association's alleged installation of the recording device is part of the same case and controversy as Plaintiff's § 1983 claim against the State Defendants. Supplemental jurisdiction does not exist as to

Count XII. Because the asserted basis of jurisdiction over Count XII does not exist, Count XII must be dismissed for lack of jurisdiction.⁵ However, the dismissal must be without prejudice because it is arguably possible for Plaintiff to amend the Complaint to allege facts showing the installation of the recording device is part of the same case and controversy as the events giving rise to Plaintiff's § 1983 claim against the State Defendants.

III. Failure to State a Claim

The Association also argues Plaintiff's claims against it should be dismissed for failure to state a claim upon which relief can be granted. See Rule 12(b)(6). The factual allegations supporting Plaintiff's tort claims against the Association arising from its involvement in and responsibility for the 7/26/16 Incident are minimal. But, because the Complaint must be liberally construed in light of Plaintiff's pro se status at the time of filing, the Court concludes that the factual allegations are sufficient to state plausible claims

⁵ In the Motion to Dismiss, the Association argues: Plaintiff's Complaint asserts diversity jurisdiction, pursuant to 28 U.S.C. § 1331; but Plaintiff failed to plead a sufficient factual basis for diversity jurisdiction. Even liberally construed, the Complaint does not assert diversity as the basis for subject matter jurisdiction in this case. See Complaint at pg. 2. It is therefore unnecessary to address the Association's argument regarding the sufficiency of the allegations regarding diversity jurisdiction.

for relief against the Association. See Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) ("To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007))). Further, liberally construing the Complaint, the factual allegations are sufficient to provide the Association with "fair notice of what the claim[s are] and the grounds upon which [they] rest[]." See Twombly, 550 U.S. at 555 (citation, quotation marks, and some alterations omitted).

Count XII, Plaintiff's claim arising from the alleged installation of the recording device, has been dismissed for lack of jurisdiction. For the sake of completeness, this Court notes that, Count XII, liberally construed, states a plausible claim for the tort of invasion of privacy. See Mehau v. Reed, 76 Hawai'i 101, 111, 869 P.2d 1320, 1330 (1994) (stating the "unreasonable intrusion upon the seclusion of another" is one of four types of tort claims for the invasion of privacy (citing Restatement (Second) of Torts §§ 652A-E (1977))); see also Restatement (Second) of Torts § 652B ("One who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy,

if the intrusion would be highly offensive to a reasonable person.").

To the extent that the Motion to Dismiss seeks dismissal of Plaintiff's claims against the Association pursuant to Rule 12(b)(6), the Motion to Dismiss is denied.

IV. Summary and Leave to Amend

The Motion to Dismiss has been granted insofar as Plaintiff's claims against the Association in Counts I, VI, and XII have been dismissed, without prejudice. Plaintiff is granted leave to file an amended complaint to address the jurisdictional defect in Count XII. Plaintiff's amended complaint must be filed by **April 14, 2020**. A motion for leave to amend is not required as to Count XII.

Because Plaintiff represented at the hearing that he is not asserting constitutional claims against the Association, Plaintiff does not have leave to amend Counts I and VI at this time. Plaintiff must file a motion - pursuant to Fed. R. Civ. P. 15(a)(2) and, if necessary, Fed. R. Civ. P. 16(b)(4) - to obtain leave to amend Counts I and VI if he wishes to pursue constitutional claims against the Association.

If Plaintiff elects to file an amended complaint to address the jurisdictional defect in Count XII, he will also be permitted to add further factual allegations supporting his remaining claims against the Association. The Court emphasizes

that Plaintiff does not have leave to add any new parties, new claims, or new theories of liability supporting his claims. If Plaintiff wishes to add new parties, claims, or theories of liability, he must file a motion pursuant to Rule 15(a)(2) and, if necessary, Rule 16(b)(4).

If Plaintiff does not file an amended complaint by **April 14, 2020**, the original Complaint will remain the operative pleading, and the case will proceed as to the remaining claims in the Complaint.

CONCLUSION

On the basis of the foregoing, the Association's May 15, 2019 Motion to Dismiss Complaint Filed on July 23, 2018 is HEREBY GRANTED IN PART AND DENIED IN PART. The Motion to Dismiss is GRANTED, insofar as Plaintiff's claims against the Association in Counts I, VI, and XII are DISMISSED WITHOUT PREJUDICE. The Motion to Dismiss is DENIED in all other respects.

If Plaintiff chooses to do so, he may file an amended complaint by **April 14, 2020**. The amendments must be consistent with the terms of this Order. If Plaintiff elects not to file an amended complaint, this case will proceed as to the remaining claims in the original Complaint.

IT IS SO ORDERED.

DATED AT HONOLULU, HAWAI`I, February 28, 2020.



/s/ Leslie E. Kobayashi
Leslie E. Kobayashi
United States District Judge

STEVEN ENG VS. STATE OF HAWAI`I, DEPARTMENT OF PUBLIC SAFETY, ET
AL; CV 18-00282 LEK-KJM; ORDER RANTING I PART AND DENYIG IN PART
DEFENDANT ASSOCIATION FO OWNERS OF KUKUI PLAZA'S MOTION TO
DISMISS COMPLAINT FILED ON JULY 23, 2018